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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 ROBERT HEATH, and
21 CHERYL FILLEKES,
22 Plaintiffs, on behalf of themselves and others
similarly situated,

23 Plaintiff,

24 v.

25 GOOGLE INC., a Delaware corporation,

26 Defendant.

Case No. 15-cv-01824-BLF

~~PROPOSED~~ STIPULATED PROTECTIVE
ORDER FOR THE TREATMENT OF
CONFIDENTIAL INFORMATION

(RE: Dkt. 37)

Complaint Filed: April 22, 2015
Trial Date: Not Set

MODIFIED BY THE COURT

Filed

NOV 13 2015
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public disclosure
 4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
 5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
 6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
 7 or responses to discovery and that the protection it affords from public disclosure and use extends
 8 only to the limited information or items that are entitled to confidential treatment under the
 9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3 below, that
 10 this Stipulated Protective Order does not entitle them to file confidential information under seal;
 11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
 12 applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
 17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
 20 as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
 22 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
 23 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
 25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 26 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 27 discovery in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the

litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means, including but not limited to: (i) marketing, financial, sales, web traffic, research and development, or technical, data or information; (ii) commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement ("NDA"), (iii) information or data relating to future products not yet commercially released and/or strategic plans; (iv) trade secret, or other confidential research and development information; and (v) commercial agreements, settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the producing party .

2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,

1 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 2 storing, or retrieving data in any form or medium) and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
 4 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
 5 including any information copied or extracted therefrom or otherwise reflecting Protected Material,
 6 in any form.

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected Material (as
 11 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 12 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 14 However, the protections conferred by this Stipulation and Order do not cover the following
 15 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
 16 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
 17 publication not involving a violation of this Order, including

18 becoming part of the public record through trial or otherwise; and (b) any information known
 19 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
 20 from a source who obtained the information lawfully and under no obligation of confidentiality to the
 21 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement
 22 or order.

23 **4. DURATION**

24 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 26 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 27 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 28 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time

limits for filing any motions or applications for extension of time pursuant to applicable law.

FOR A PERIOD OF SIX MONTHS AFTER FINAL DISPOSITION OF THIS LITIGATION, THIS COURT
 5. DESIGNATING PROTECTED MATERIAL WILL RETAIN JURISDICTION TO ENFORCE
 THE TERMS OF THIS ORDER.

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,

1 by making appropriate markings in the margins) and must specify, for each portion, the level of
2 protection being asserted.

3 A Party or Non-Party that makes original documents or materials available for inspection
4 need not designate them for protection until after the inspecting Party has indicated which material it
5 would like copied and produced. During the inspection and before the designation, all of the material
6 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
7 EYES ONLY." After the inspecting Party has identified the documents it wants copied and
8 produced, the Producing Party must determine which documents, or portions thereof, qualify for
9 protection under this Order. Then, before producing the specified documents, the Producing Party
10 must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
11 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or
12 portions of the material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
14 specify, for each portion, the level of protection being asserted.

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
16 Designating Party identify on the record, before the close of the deposition, hearing, or other
17 proceeding, all protected testimony and specify the level of protection being asserted. When it is
18 impractical to identify separately each portion of testimony that is entitled to protection and it
19 appears that substantial portions of the testimony may qualify for protection, the Designating Party
20 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to
21 have up to 21 days after receipt of the final certified transcript, to identify the specific portions of the
22 testimony as to which protection is sought and to specify the level of protection being asserted. Only
23 those portions of the testimony that are appropriately designated for protection within the 21 days
24 shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
25 Party may specify, at the deposition or up to 21 days after receipt of the final certified transcript, if
26 that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

28 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or

1 other proceeding to include Protected Material so that the other parties can ensure that only
 2 authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"
 3 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall
 4 not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 5 ATTORNEYS' EYES ONLY."

6 Transcripts containing Protected Material shall have an obvious legend on the title page that
 7 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 8 (including line numbers as appropriate) that have been designated as Protected Material and the level
 9 of protection being asserted by the Designating Party. The Designating Party shall inform the court
 10 reporter of these requirements. Prior to the expiration of the 21-day period for designation, the entire
 11 transcript shall be treated as if it had been designated "HIGHLY CONFIDENTIAL –
 12 ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After the expiration of that
 13 period, the transcript shall be treated only as actually designated.

14 (c) for information produced in some form other than documentary and for any other tangible
 15 items, that the Producing Party affix in a prominent place on the exterior of the container or
 16 containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY
 17 CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of the information
 18 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 19 portion(s) and specify the level of protection being asserted.

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 21 properly designate qualified information or items does not waive the Designating Party's right to
 22 secure protection under this Order for such material. With a reasonable time after discovering an
 23 inadvertent failure to properly designate qualified information or items, the Designating Part shall
 24 provide written notice to the Receiving Party, and shall furnish the Receiving Party with replacement
 25 pages with the appropriate designation(s). Upon timely correction of a designation, the Receiving
 26 Party must make reasonable efforts to assure that the material is treated in accordance with the
 27 provisions of this Order, and shall return or destroy the improperly designated material.

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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the original
7 designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
9 by providing written notice of each designation it is challenging and describing the basis for each
10 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
11 recite that the challenge to confidentiality is being made in accordance with this specific paragraph of
12 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
13 the process by conferring directly (in voice to voice dialogue; other forms of communication are not
14 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
15 explain the basis for its belief that the confidentiality designation was not proper and must give the
16 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
17 and, if no change in designation is offered, to explain the basis for the chosen designation. A
18 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
19 this meet and confer process first or establishes that the Designating Party is unwilling to participate
20 in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, ~~the Designating Party shall file and serve a motion to retain confidentiality under Civil~~
23 ~~Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable), within 21 days of the~~
24 ~~initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process~~
25 ~~will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a~~
26 ~~competent declaration affirming that the movant has complied with the meet and confer~~
27 ~~requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a~~
28 ~~motion including the required declaration within 21 days (or 14 days, if applicable) shall~~

IN DISCOVERY DISPUTE JOINT REPORT
(DDJR) THE PARTIES MUST ATTEST THAT THEY HAVE
SEEK COURT
INTERVENTION WITHIN THE PERIOD SET OUT IN STANDING ORDER, SECTION D

1 automatically waive the confidentiality designation for each challenged designation. In addition, the
 2 Challenging Party may ~~file a motion challenging~~ ^{SEEK RELIEF WITH RESPECT TO} a confidentiality designation at any time if there is
 3 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 4 portions thereof. ^{IN DDJR} Any ~~motion~~ brought pursuant to this provision ~~must be accompanied by a~~ ^{THE PARTIES MUST ATTEST}
 5 ~~competent declaration affirming that the movant has~~ ^{THAT THEY HAVE} complied with the meet and confer
 6 requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 8 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
 9 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
 10 Designating Party has waived the confidentiality designation by failing to ~~file a motion to retain~~ ^{SEEK RELIEF}
 11 ~~confidentiality~~ as described above, all parties shall continue to afford the material in question the
 12 level of protection to which it is entitled under the Producing Party's designation until the court rules
 13 on the challenge.

14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
 18 categories of persons and under the conditions described in this Order. When the litigation has been
 19 terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
 20 DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 22 secure manner that ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
 24 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 25 information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action (including support
 27 personnel), as well as independent contractors retained by said Outside Counsel of Record to whom
 28 it is reasonably necessary to disclose the information for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party,
3 or to the Receiving Party where the Receiving Party is an individual, to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
5 to Be Bound” (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
7 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
8 Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and Professional
11 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
15 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
17 bound by the court reporter and may not be disclosed to anyone except as permitted under this
18 Stipulated Protective Order.

19 (g) the author or recipient of a document containing the information or a custodian or other
20 person who otherwise possessed or knew the information.

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

22 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
23 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this action (including support
26 personnel), as well as independent contractors retained by said Outside Counsel of Record to whom
27 it is reasonably necessary to disclose the information for this litigation and who have signed the
28 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel's current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved, in any competitive decision-making.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity

1 from whom the Expert has received compensation or funding for work in his or her areas of expertise
 2 or to whom the expert has provided professional services, including in connection with a litigation, at
 3 any time during the preceding five years, and (6) identifies (by name and number of the case, filing
 4 date, and location of court) any litigation in connection with which the Expert has offered expert
 5 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
 6 preceding five years.

7 (b) A Party that makes a request and provides the information specified in the preceding
 8 respective paragraphs may disclose the subject Protected Material to the identified Designated House
 9 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written
 10 objection from the Designating Party. Any such objection must set forth in detail the grounds on
 11 which it is based.

12 (c) A Party that receives a timely written objection must meet and confer with the
 13 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
 14 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
 15 ~~disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local~~
 16 ~~Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the~~
 17 ~~court to do so.~~ Any such ~~motion~~ ^{DDJR} must describe the circumstances with specificity, set forth in detail
 18 the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary,
 19 assess the risk of harm that the disclosure would entail, and suggest any additional means that could
 20 be used to reduce that risk. In addition, any such ~~motion~~ ^{DDJR} must be accompanied by a competent
 21 ~~declaration~~ ^e describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the
 22 content of the meet and confer discussions) and setting forth the reasons advanced by the
 23 Designating Party for its refusal to approve the disclosure.

24 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 25 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
 26 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
 27 its Designated House Counsel or Expert.

28 ///

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 2 **OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
 7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
 9 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
 10 Order. Such notification shall include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 12 Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
 14 court order shall not produce any information designated in this action as “CONFIDENTIAL” or
 15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court
 16 from which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 17 permission. The Designating Party shall bear the burden and expense of seeking protection in that
 18 court of its confidential material – and nothing in these provisions should be construed as authorizing
 19 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
 21 **THIS LITIGATION**

22 (a) The terms of this Order are applicable to information produced by a Non-Party in this
 23 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 24 EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is
 25 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
 26 construed as prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to produce a
 28 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with

the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

ALL DISCLOSURE AND DISCOVERY DISPUTES ARE SUBJECT TO THE UNDERSIGNED'S STANDING ORDER RE CIVIL
10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL *DISCOVERY DISPUTES.*

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A. Nothing in this paragraph shall be construed to limit a Designating Party's rights or remedies relating to the unauthorized disclosure of its Protected Material, or any injury resulting therefrom.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, including the attorney-client privilege,

the work product immunity, the common interest doctrine, or other privilege, doctrine, right or immunity (collectively, "Privilege"), the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Neither the inadvertent production of material that is subject to a claim of Privilege, or the failure to promptly notify the Receiving Party of such claim, shall prejudice or otherwise constitute a waiver or estoppel of any such Privilege. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court

1 **13. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 3 Receiving Party must, at the option of the Producing Party, either return all Protected Material to the
 4 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
 5 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
 6 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the
 7 Receiving Party must submit a written certification to the Producing Party (and, if not the same
 8 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category,
 9 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
 10 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
 11 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
 12 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 13 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
 14 work product, and consultant and expert work product, even if such materials contain Protected
 15 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 16 this Protective Order as set forth in Section 4 (DURATION).

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: November 10, 2015

OGLETREE, DEAKINS, NASH, SMOAK &
 STEWART, P.C.

20 By: /s/ Jill V. Cartwright

21 Thomas M. McInerney
 22 A. Craig Cleland
 23 Jill V. Cartwright

Attorneys for Defendant
 GOOGLE INC.

24 DATED: November 10, 2015

KOTCHEN & LOW LLP

26 By: /s/ Daniel L. Low

Daniel L. Low

27 Attorneys for Plaintiffs
 28 ROBERT HEATH AND CHERYL FILLEKES

SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the other signatories.

DATED: November 10, 2015

By: /s/ Jill V. Cartwright
Jill V. Cartwright

ORDER

AS MODIFIED BY THE COURT,
PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 11/12/15


UNITED STATES DISTRICT JUDGE

MAGISTRATE

HOWARD R. LLOYD

22947811.1

1 **ATTACHMENT A TO THE AGREED PROTECTIVE ORDER**
2 **FOR THE TREATMENT OF CONFIDENTIAL INFORMATION**

3 **CONFIDENTIALITY AGREEMENT**

4 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

5 I, _____ [print or type full name], of _____
6 [print or type full address], declare under penalty of perjury that I have read in its entirety and
7 understand the Stipulated Protective Order that was issued by the United States District Court for the
8 Northern District of California on [date] in the case of **Robert Heath v. Google Inc., Northern**
9 **District of California Case no. 15-cv-01824-BLF**. I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone number]
19 as my California agent for service of process in connection with this action or any proceedings
20 related to enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

28 22947811.1